

UNITED STATES DISTRICT COURT  
DISTRICT OF PUERTO RICO

CARLOS D. CRUZ-RODRÍGUEZ,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

Civil No. 10-1455 (JAF)

(Crim. No. 03-081)

**ORDER**

On June 22, 2011, we held an evidentiary hearing on the facts underlying Petitioner's 28 U.S.C. § 2255 claim that his counsel failed to adequately advise him as to available plea offers. (See generally Docket No. 18 at 2, 7.) We heard testimony from both Petitioner's trial counsel and Petitioner regarding their discussions of plea offers prior to Petitioner's trial. (See Docket No. 31 (hearing transcript).) Based on our observation of that testimony, we find credible counsel's testimony that he fully advised Petitioner as to the government's offers and that he actively pursued a plea agreement during communications both to the government and his client. We find incredible Petitioner's claim that counsel failed to communicate and explain the available plea offers. We therefore find that Petitioner's counsel was not deficient in advising Petitioner as to his potential plea. Based on this conclusion, we **DENY** § 2255 relief grounded in this alleged ineffective assistance of counsel (Docket No. 3 at 10).

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1 Further, we **NOTE** Petitioner's post hearing brief (Docket No. 29) and, given the instant  
2 denial, **DENY AS MOOT** Respondent's motion to strike said brief (Docket No. 30).

3 We previously denied all other grounds Petitioner raised for § 2255 relief. (See Docket  
4 No. 18.) In accordance with Rule 11 of the Rules Governing § 2255 Proceedings, whenever  
5 we deny § 2255 relief, we must concurrently determine whether to issue a certificate of  
6 appealability ("COA"). We grant a COA only upon "a substantial showing of the denial of a  
7 constitutional right." 28 U.S.C. § 2253(c)(2). To make this showing, "[t]he petitioner must  
8 demonstrate that reasonable jurists would find the district court's assessment of the  
9 constitutional claims debatable or wrong." Miller-El v. Cockrell, 537 U.S. 322, 338 (2003)  
10 (quoting Slack v. McDaniel, 529 U.S. 473, 484 (2000)). We see no way in which a reasonable  
11 jurist could find our assessment of Petitioner's constitutional claims debatable or wrong.  
12 Petitioner may request a COA directly from the First Circuit, pursuant to Rule of Appellate  
13 Procedure 22.

14 **IT IS SO ORDERED.**

15 San Juan, Puerto Rico, this 19<sup>th</sup> day of July, 2011.

16 s/José Antonio Fusté  
17 JOSE ANTONIO FUSTE  
18 U.S. District Judge